

**IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE

NORTHERN FARMS, INC.,

Respondent,

v.

W.K. JENKINS and M. EARLENE JENKINS d/b/a GREEN ACRES FARMS,

Appellants.

DOCKET NUMBER WD77053

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: October 13, 2015

APPEAL FROM

The Circuit Court of Platte County, Missouri
The Honorable Abe Shafer, Judge

JUDGES

Division Three: Mitchell, P.J., and Hardwick and Gabbert, JJ.

CONCURRING.

ATTORNEYS

Mark C. Owens, Overland Park, KS

Nathan D. Leadstrom and Mary E. Christopher, Topeka, KS

Attorneys for Respondent,

Jonathan Sternberg, Kansas City, MO

Richard A. Koehler, Butler, MO

Attorneys for Appellants.



MISSOURI APPELLATE COURT OPINION SUMMARY MISSOURI COURT OF APPEALS, WESTERN DISTRICT

NORTHERN FARMS, INC.,)
)
Respondent,)
v.) **OPINION FILED:**
) **October 13, 2015**
W.K. JENKINS and M. EARLENE)
JENKINS d/b/a GREEN ACRES FARMS,)
)
Appellants.)

WD77053

Platte County

Before Division Three Judges: Karen King Mitchell, Presiding Judge, and Lisa White Hardwick and Anthony Rex Gabbert, Judges

W.K. and M. Earlene Jenkins (“the Jenkinses”) appeal the trial court’s judgment in favor of Northern Farms on its claims of fraud and unjust enrichment against the Jenkinses stemming from the period of time when W.K. Jenkins was the president of Northern Farms. The Jenkinses argue that Northern Farms voluntarily dismissed one of the counts upon which the trial court granted judgment, that the trial court inappropriately allowed Northern Farms to state additional claims for the first time at trial, and that certain claims are barred by the statute of limitations.

AFFIRMED.

Division Three holds:

1. The record shows that the trial court allowed Northern Farms to bifurcate one of its counts in advance of trial, and did not, as argued by the Jenkinses, allow the pleadings to be amended for the first time at trial. Accordingly, the Jenkinses failed to appeal the appropriate ruling of the trial court.
2. Additionally, the record indicates that the Jenkinses were aware of and did not object to the trial court allowing the bifurcation of the count prior to trial.

3. Northern Farms did not dismiss its legal claims for unjust enrichment when following the trial, at which the unjust enrichment claims were presented to the jury, Northern Farms indicated that it wished to voluntarily dismiss all of its remaining equitable claims.
4. Rather, in an effort to reach a final judgment, Northern Farms needed to dispose of all remaining claims. If there were equitable claims remaining, they were dismissed. The issue of whether legal and equitable claims can be combined in a single count is not before the court because it was not preserved at the trial court.
5. The statute of limitations begins to run when the damage is capable of ascertainment, not when the actionable conduct occurs. There was adequate evidence to support finding that Northern Farms did not find out about W.K. Jenkins's fraud until at least 2002. Because Northern Farms' petition was filed in 2006, it was within the five-year statute of limitations.
6. Acceptance and appreciation of the benefit are elements of the cause of action for unjust enrichment. Because M. Earlene Jenkins initially sided with Northern Farms and disclaimed any right to fraudulently obtained funds, the statute of limitations on Northern Farms' claim against her for unjust enrichment did not begin to run until she asserted her right to the funds after the start of the litigation.

Opinion by: Karen King Mitchell, Presiding Judge

October 13, 2015

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